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Paper No. 4

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**JUN 14 2002**

**OFFICE OF PETITIONS**

In re Application of  
Bernier et al.  
Application No. 10/023,245  
Filed: December 18, 2001  
Attorney Docket No. 8522

DECISION ON PETITION

This is a decision on the petition filed March 20, 2002, requesting, in effect, that Page 20 of the specification filed on March 20, 2002 be entered as part of the original disclosure.

The petition is **dismissed**.

The application was filed on December 18, 2001. However, on January 25, 2002, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of December 18, 2001, and advising applicants that page 20 of the specification appeared to have been omitted.

In response, the present petition was filed. Petitioner alleges page 20 was filed with the original application.

All the evidence present in the file has been carefully considered, but is not persuasive that page 20 was submitted with the original application.

Analysis:

While petitioner apparently believes that page 20 was filed on December 18, 2001, the file of application No. 10/023,245<sup>1</sup> shows that page 20 of the specification was not received, since no such paper is present in the file. An applicant alleging that a paper was filed in the USPTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

The application was deposited with a postcard receipt.<sup>2</sup> The postcard receipt states that 24 pages of specification are present. Upon receipt of the application papers, the Office reviewed the file

<sup>1</sup> The file contains the actual papers received and the file is an official government record prepared and maintained by disinterested USPTO employees as a part of their customary and usual duties.

<sup>2</sup> Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

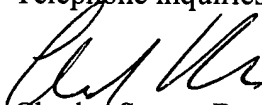
and verified that at least 24 pages of specification were present. The 24 pages were merely counted and were not substantively reviewed. A manual count of the pages of specification in the file indicates the presence of 25 pages of specification. Duplicate copies exist for pages 6 and 22. Therefore, the postcard receipt fails to establish that page 20 was submitted with the original application, but only proves that at least 24 pages of specification were submitted with the application.

Since applicants have not filed a petition under 37 CFR 1.182 requesting March 20, 2002, the date the missing pages were filed, as the filing date, page 20 of the specification will not be entered.

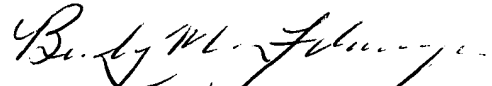
An amendment to the specification deleting references to the missing pages should be filed prior to the first USPTO action in order to avoid further delays in the examination of the application. In the alternative, if petitioner desires for the examiner to consider pages which were not submitted as part of the original disclosure, then petitioner may seek to submit some or all of those pages as an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter. See MPEP 608.02(a).

The file will be returned to the Office of Initial Patent Examination for further processing with a filing date of December 18, 2001, using only the papers filed on that date.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.<sup>3</sup>



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Office of Petitions  
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<sup>3</sup> Further correspondence with respect to this matter should be addressed as follows:

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